



## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### PART I: GENERAL INFORMATION

Requestor Name and Address:  HIGHPOINT PHARMACY PO BOX 172615 ARLINGTON TX 76003	MFDR Tracking #: M4-05-A839-01
	DWC Claim #:
	Injured Employee:
Respondent Name and Box #:  ALBERTSONS INC Box #: 19	Date of Injury:
	Employer Name:
	Insurance Carrier #:

### PART II: REQUESTOR'S POSITION SUMMARY AND PRINCIPAL DOCUMENTATION

**Requestor's Position Summary:** "We have submitted a claim to the Carrier for date of service 12-29-04 for an EBI Ice Machine, cold therapy unit in the amount of \$495.00." "Total dollar amount in dispute is **\$495.00.**" "We have billed the Carrier our usual and customary rate and have provided the Carrier with examples of audit sheets and/or copies of checks where other carriers in this area have established the \$495.00 charge for the EBI Ice Machine as a fair and reasonable amount as the Commission has not established a MAR for this procedure."

**Principal Documentation:**

1. DWC 60 Package
2. Medical Bill(s)
3. EOB(s)
4. Medical Records
5. Total Amount Sought - \$495.00

### PART III: RESPONDENT'S POSITION SUMMARY AND PRINCIPAL DOCUMENTATION

**Respondent's Position Summary:** "This is a dispute involving what is portrayed as durable medical equipment and called an 'EBI Ice Machine-cold therapy unit'. Initially, carrier would note that devices of this type are never medically necessary pursuant to current Medicare Guidelines (L11552). See the attached literature. The provider should have coded the device properly as E0218 and not a generic E1399. This is just another attempt at repackaging a previously denied device. Carrier denied medical necessity. Carrier demands that the provider be forced to re-code this device correctly." "Carrier also maintains its fee dispute. Carrier maintains that since this device is not medically necessary in any situation, it has no value. Carrier maintains that the provider should produce it's invoice and product literature so that the true scope and magnitude of the provider's actions is understood."

**Principal Documentation:**

1. DWC 60 Package

### PART IV: SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Calculations	Amount in Dispute	Amount Due
12/29/2004	E1399-EBI Ice Machine	\$495.00 minus amount paid of \$0.00 = \$495.00	\$495.00	\$495.00
			<b>Total Due:</b>	<b>\$495.00</b>

### PART V: FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Tex. Lab. Code Ann. §413.031 of the Texas Workers' Compensation Act, and pursuant to all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

## **Background**

1. This request for medical fee dispute resolution was received by the Division on July 25, 2005. Pursuant to Division rule at 28 TAC §133.307(g)(3), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, the Division notified the requestor on August 9, 2005 to send additional documentation relevant to the fee dispute as set forth in the rule.
2. Division rule at 28 TAC §134.1, effective May 16, 2002, 27 TexReg 4047, requires that services not identified in a fee guideline shall be reimbursed at fair and reasonable rates.
3. Texas Labor Code §413.011 requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control.
4. Division rule at 28 TAC §134.202, titled *Medical Fee Guideline*, effective August 1, 2003, sets out the reimbursement for medical treatment.
5. Division rule at 28 TAC §133.307, effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, sets out the procedure for medical fee dispute resolution.
6. Division rule at 28 TAC §133.304, effective July 15, 2000, 25 TexReg 2115, requires the insurance carrier to develop and consistently apply a methodology to determine fair and reasonable reimbursement.
7. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated 3/10/2005

- N-Not appropriately documented. Please resubmit with a copy of the invoice for the DME billed.

Explanation of benefits dated 3/29/2005

- O- Please resubmit with a copy of the invoice for the DME billed.

## **Issues**

1. Was the respondent's response filed in the form and manner prescribed under Division rule at 28 Texas Administrative Code §133.307?
2. Is the denial code supported?
3. What is the applicable rule for reimbursement?
4. Did the requestor support the position that additional reimbursement is due for HCPCS code E1399?
5. Did the respondent support the position that the amount paid is fair and reasonable?
6. Is the requestor entitled to additional reimbursement?

## **Findings**

1. Division rule at 28 TAC §133.307(j)(2) states "The response shall address only those denial reasons presented to the requestor prior to the date the request for medical dispute resolution was filed with the division and the other party. Responses shall not address new or additional denial reasons or defenses after the filing of an request. Any new denial reasons or defenses raised shall not be considered in the review."

Division rule at 28 TAC §133.304(c) states "At the time an insurance carrier makes payment or denies payment on a medical bill, the insurance carrier shall send, in the form and manner prescribed by the Commission, the explanation of benefits to the appropriate parties. The explanation of benefits shall include the correct payment exception codes required by the Commission's instructions, and shall provide sufficient explanation to allow the sender to understand the reason(s) for the insurance carrier's action(s)."

The respondent states in the response to the request for medical fee dispute resolution that "The provider should have coded the device properly as E0218 and not a generic E1399. This is just another attempt at repackaging a previously denied device. Carrier denied medical necessity." The Division finds that the issues of coding and medical necessity were not raised by the respondent on the explanation of benefits in accordance with Division rule at 28 TAC §133.304(c). The Division further concludes that these issues were not raised by the respondent prior to the request for medical fee dispute resolution. Therefore, the response was not filed in the form and manner prescribed under Division rule at 28 TAC §133.307(j)(2), and these defenses shall not be considered in this review.

2. The requestor states in the position summary that "We have billed the Carrier our usual and customary rate and have provided the Carrier with examples of audit sheets and/or copies of checks where other carriers in this area have established the \$495.00 charge for the EBI Ice Machine as a fair and reasonable amount..." The requestor noted on

the medical bill that HCPCS code E1399 was for an EBI Ice Machine-Cold Therapy. Therefore, the EOB denial reason code is not supported.

3. Division rule at 28 TAC §134.202(c)(2) states “for Healthcare Common Procedure Coding System (HCPCS) Level II codes, A, E, J, K, and L: (A) 125% of the fee listed for the code in the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) fee schedule; (B) if the code has no published Medicare rate, 125% of the published Texas Medicaid Fee Schedule Durable Medical Equipment/Medical Supplies Report J, for HCPCS; or (C) if neither paragraph (2)(A) nor (2)(B) of this section apply, then as calculated according to paragraph (6) of this subsection.” HCPCS code E1399 is described as “Durable Medical Equipment, miscellaneous”. The requestor noted on the medical bill that HCPCS code E1399 was for an “EBI Ice Machine.” Neither of the DMEPOS fee schedule nor the Texas Medicaid Fee Schedule has set a MAR for HCPCS code E1399.

Division rule at 28 TAC §134.202(c)(6) states “for products and services for which CMS or the commission does not establish a relative value unit and/or a payment amount the carrier shall assign a relative value, which may be based on nationally recognized published relative value studies, published commission medical dispute decisions, and values assigned for services involving similar work and resource commitments.” The Division finds that HCPCS code E1399 does not have an established relative value and the insurance carrier did not submit documentation to support that the carrier has assigned a relative value.

Division rule at 28 TAC §134.202(d) states “In all cases, reimbursement shall be the least of the: (1) MAR amount as established by this rule; (2) health care provider’s usual and customary charge; or (3) health care provider’s workers’ compensation negotiated and/or contracted amount that applies to the billed service(s).”

Division rule at 28 TAC §134.1 requires that “Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers’ Compensation Act, §413.011 until such period that specific fee guidelines are established by the commission.”

Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.

Review of the documentation submitted by the parties to this dispute finds no documentation to support that an amount was pre-negotiated and/or contracted between the provider and carrier for the disputed HCPCS code E1399; therefore, the insurance carrier shall reimburse the provider the fair and reasonable rate in accordance with Division rule at 28 TAC §134.1.

4. Division rule at 28 TAC §133.307(g)(3)(D) requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.”

Review of the submitted documentation finds that:

- The requestor’s position statement states that “We have billed the Carrier our usual and customary rate and have provided the Carrier with examples of audit sheets and/or copies of checks where other carriers in this area have established the \$495.00 charge for the EBI Ice Machine as a fair and reasonable amounts as the Commission has not established a MAR for this procedure.”
- The requestor submitted nine redacted medical bills with EOBs from nine different insurance carriers to support their position that \$495.00 is a fair and reasonable rate of reimbursement for EBI Ice Machine billed under code E1399.

The request for additional reimbursement for HCPCS codes E1399 is supported. Thorough review of the documentation submitted by the requestor finds that the requestor has demonstrated and justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for these disputed services, would ensure the quality of medical care, achieve effective medical cost control, provide for payment that is not in excess of a fee charged for similar treatment of an injured individual of an equivalent standard of living, and would satisfy the requirements of Texas Labor Code §413.011(d) and Division rule at 28 TAC §134.1. The Division concludes that the requestor has met its burden of proof to support its position that \$495.00 is a fair and reasonable rate of reimbursement for EBI Ice Machine billed under code E1399.

5. Division rule at 28 TAC §133.304(i)(1) requires that “When the insurance carrier reduces or denies payment for treatment(s) and/or service(s) for which the Division has not established a maximum allowable reimbursement, the insurance carrier shall... develop and consistently apply a methodology to determine fair and reasonable reimbursement amounts to ensure that similar procedures provided in similar circumstances receive similar reimbursement.” Review of the submitted documentation finds that the respondent did not submit documentation to support that the insurance carrier has developed and consistently applies a methodology to determine fair and reasonable reimbursement amounts in accordance with Division rule at 28 TAC §133.304(i)(1).

Division rule at 28 TAC §133.304(i)(2) requires that “When the insurance carrier reduces or denies payment for

treatment(s) and/or service(s) for which the Division has not established a maximum allowable reimbursement, the insurance carrier shall... explain and document the method it used to calculate the rate of pay, and apply this method consistently.” Review of the submitted documentation finds no explanation or documentation of the method used to calculate the rate of pay, nor any documentation to support consistent application of the method.

Division rule at 28 TAC §133.307(j)(1)(E)(iii) requires that the respondent shall file a response to the requestor’s additional documentation that shall include a statement of the disputed fee issue(s), which includes “a discussion of how the Texas Labor Code and commission [now the Division] rules, including fee guidelines, impact the disputed fee issues.” Review of the submitted documentation finds that the respondent did not discuss how the Texas Labor Code and Division rules impact the disputed fee issues. The Division concludes that the respondent has not met the requirements of Division rule at 28 TAC §133.307(j)(1)(E)(iii).

Division rule at 28 TAC §133.307(j)(1)(E)(iv) requires that the respondent shall file a response to the requestor’s additional documentation that shall include a statement of the disputed fee issue(s), which includes “a discussion regarding how the submitted documentation supports the respondent position for each disputed fee issue.” Review of the submitted documentation finds that the respondent did not discuss how the submitted documentation supports the respondent position for each disputed fee issue. The Division concludes that the respondent has not met the requirements of Division rule at 28 TAC §133.307(j)(1)(E)(iv).

Division rule at 28 TAC §133.307(j)(1)(F) requires that if the dispute involves health care for which the Division has not established a maximum allowable reimbursement the respondent’s response shall include “documentation that discusses, demonstrates, and justifies that the amount the respondent paid is a fair and reasonable rate of reimbursement in accordance with Texas Labor Code §413.011, §133.1 and §134.1 of this title.” Review of the submitted documentation finds that:

- The respondent did not submit documentation to support that the carrier’s rate of reimbursement meets the Act’s criteria for payment.
- The respondent did not explain or submit documentation to support the method used to calculate the rate of pay as required under Division rule at 28 TAC §133.304(i)(2).
- The respondent did not discuss or explain how the amount paid is a fair and reasonable rate of reimbursement.
- The respondent did not discuss or explain how reimbursement in the amount paid by the respondent would ensure the quality of medical care, achieve effective medical cost control, provide for payment that is not in excess of a fee charged for similar treatment of an injured individual of an equivalent standard of living, consider the increased security of payment, or otherwise satisfy the requirements of Texas Labor Code §413.011(d) or Division rule at 28 TAC §134.1.

The respondent’s position is not supported. Thorough review of the documentation submitted by the respondent finds that the respondent has not demonstrated or justified that the amount paid is a fair and reasonable rate of reimbursement in accordance with Texas Labor Code §413.011 and Division rules at §133.1 and §134.1. The Division concludes that the respondent has not met the requirements of Division rule at 28 TAC §133.307(j)(1)(F).

6. Reimbursement will therefore be calculated according to the fair and reasonable amount established by the requestor.
  - E1399 – EBI Ice Machine: The fair and reasonable amount for this DME item is \$495.00, less the amount of \$0.00 previously paid by the carrier leaves an amount due of \$495.00. This amount is recommended.

### **Conclusion**

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation supports the reimbursement amount sought by the requestor. For the reasons stated above, the division finds that the requestor has established that reimbursement is due. As a result, the amount ordered is \$495.00.

## **PART VI: ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031 and §413.019 (if applicable), the Division has determined that the requestor is entitled to \$495.00 reimbursement for the services involved in this dispute. The Division hereby **ORDERS** the respondent to remit to the requestor the amount of \$495.00 plus applicable accrued interest per Division rule at 28 Tex. Admin. Code §134.803, due within 30 days of receipt of this Order.

**June 16, 2010**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
Date

## PART VII: YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **20** (twenty) days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with other required information specified in Division rule at 28 Tex. Admin. Code §148.3(c).

Under Texas Labor Code § 413.0311, your appeal will be handled by a Division hearing under Title 28 Texas Administrative Code Chapter 142 rules if the total amount sought does not exceed \$2,000. If the total amount sought exceeds \$2,000, a hearing will be conducted by the State Office of Administrative Hearings under Texas Labor Code §413.031.

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**